

REMARKS

The Examiner's Final Office Action dated 03/26/03 has been reviewed. The Examiner rejected applicant's Claim 2 based on 35 U.S.C. 112, second paragraph. Applicant has amended his Claim 2 to address and fully respond to Examiner's Rejections.

Examiner has rejected Claim 2 under 35 U.S.C. 103 (a) as being unpatentable over Marshall (U.S. RE 37212E) in view of Jones, Jr. (U.S. 5335421) and Prior Art as stated in Fig. 1 by Sarasin (U.S. 4970797). This rejection is traversed as it applies to Claim 2 as amended herein.

The Marshall tape measure has a set of edge indicia which is increasing, such as the inches being labeled as 1, 2, 3, etc. The present invention does not use this kind of progressive, increasing edge indicia, but instead, uses a repeating fixed measure, being 5 5/8 inches on one edge and 5 inches on the other. The reason these indicia are repeated is to make the applicant's tape measure readily usable for the installation of siding, as it is common to leave 5 or 5 5/8 inches "to the weather". The indicia of the central extent of the tape is set forth in progressive measurements of feet. Applicant submits that it should be noted that the Marshall tape has pairs of matched indicia on either edge of the ruler, to make the reading of the tape easy from either edge, while the present application does not teach such a configuration. There is also a significant difference between the use of the present invention as opposed to

the Marshall invention. The Marshall tape measure is probably replaceable, that is, where the central tape is replaced when it is worn out. This is different from single use, disposable tape, as is the present invention. The present invention is made to be used in a manner such that a user who desires a certain length of tape for a job, cuts that desired length from a spool of the tape measure. The length is then used once for the siding job, and discarded. While the argument may be advanced that being able to replace a tape is analogous with being disposable, one can easily differentiate between the two, by considering an automobile, which has replaceable parts. One could hardly think that the automobile is disposable after a single use. People do not throw their cars away when they arrive at work. The car has replaceable parts, but is used repeatedly, for years, until replacement is made necessary. The current invention is disposable after a single use, and is designed for such single use. The anticipated usage would be a siding professional cutting off a length of tape and tacking it to the corner of the building to be sided. A snap line is struck at each 5 or 5 5/8 inch intervals, and the siding is then easily, and accurately applied. At the end of the use, the tape is taken down, and discarded, after only one use.

Jones, like the Marshall invention, uses a progressively increasing indicia to mark distances on the tape measure. Jones does not show a repeating measure, such as 5 inches or 5 5/8

inches. Jones, instead, repeats sets of indicia, being the fractions of an inch, or the number of inches in a foot. In the Jones patent, the repeating sets of indicia line up across from each other with a repeated frequency, with one side showing a fraction which is one-half of the opposite fraction. The alignment in that instance is one for every two indicia. The present invention does not exhibit that frequency of match-up.

None of the prior art teaches or discloses a single use, disposable measuring tape. Applicant also requests that the Examiner note that none of the prior art cited utilizes a repeating measurement, such as the present invention repeating 5 or $5 \frac{5}{8}$ inches. While the prior art may use a repeated distance of one inch or one-quarter inch, the markings of the ruler are additive and progressive, while the markings of the present invention are not progressive nor additive.

It is deemed that the present amendments overcome all grounds of objection and rejection and place this application in condition for allowance.

If the Examiner is not of the opinion that this amendment places the application in condition for allowance, she is requested to enter the amendment for purposes of appeal.